

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANNIE COLE (#200962),

Plaintiff,

CASE NO. 2:14-CV-11325
JUDGE NANCY G. EDMUNDS
MAGISTRATE JUDGE PAUL J. KOMIVES

v.

BENJAMIN MAULDIN,
ANN WARD,
T. MARSHALL,
RICHARD STAPLETON,
MELISSA GODFREY,
WIXON and
M. ZELLER,

Defendants,

**ORDER DENYING PLAINTIFF'S MOTION (Doc. Ent. 35) FOR GUIDANCE IN
RESPONDING TO MAULDIN, WARD AND GODFREY'S JULY 22, 2014 MOTION TO
DISMISS (Doc. Ent. 21) and PROVIDING RESPONSE DEADLINES FOR PENDING
MOTIONS TO DISMISS (Doc. Entries 21 and 38)**

I. Background

Plaintiff Annie Lee Cole (#200962) is currently incarcerated at the MDOC's Women's Huron Valley Correctional Facility (WHV) in Ypsilanti, Michigan. *See* www.michigan.gov/corrections, "Offender Search." On April 7, 2014, plaintiff filed an amended complaint against four (4) defendants: B. Mauldin (Reviewing Officer), Ann Ward (Hearings Investigator), R. Stapleton (Hearings Administrator) and M. Zeller (Hearing Officer). Doc. Ent. 5 ¶¶ 4-7; *see also* Doc. Ent. 5 at 12, 13, 14, 15, 21.

II. Pending MDOC Defendants' Dispositive Motions

Judge Edmunds has referred this case to me for pretrial matters. Doc. Ent. 12. MDOC defendants Mauldin, Ward and Godfrey have filed a July 22, 2014 motion to dismiss (Doc. Ent.

21) with regard to plaintiff's April 7, 2014 amended complaint (Doc. Ent. 5). Plaintiff's response was due on or before September 2, 2014. Doc. Ent. 22. To date, plaintiff has not filed a response.¹

On October 8, 2014, MDOC defendant Stapleton filed a motion to dismiss on the basis of absolute immunity. Doc. Ent. 38.

III. Instant Motion

Currently before the Court is plaintiff's October 1, 2014 motion (Doc. Ent. 35) for guidance in responding to the MDOC defendants Mauldin, Ward and Godfrey's July 22, 2014 motion to dismiss (Doc. Ent. 21). Plaintiff points out that Godfrey - who is not named in plaintiff's April 7, 2014 amended complaint (*see* Doc. Ent. 5 at 1, 2 ¶¶ 4-8) - is renamed in the September 2, 2014 proposed second amended complaint (*see* Doc. Ent. 29 at 4, 6 ¶ 6). Doc. Ent. 35 ¶ 5. Also, plaintiff contends that the September 2, 2014 proposed second amended complaint - which mentions First, Eighth and Fourteenth Amendment claims against Mauldin (*see* Doc. Ent. 29 at 11 ¶ 25) - will change the MDOC defendants' July 22, 2014 argument as to Mauldin - which concentrated on the Eighth Amendment and the First Amendment (*see* Doc. Ent. 21 at 15-17). Doc. Ent. 35 ¶ 6. Moreover, perhaps acknowledging that the April 7, 2014 amended complaint names Ward in her individual and official capacities (*see* Doc. Ent. 5 ¶ 8) and defendants' July 22, 2014 argument that Ward is entitled to absolute judicial immunity (*see* Doc.

¹On September 2, 2014, plaintiff filed a motion (Doc. Ent. 29) for leave to file an amended complaint. Doc. Ent. 29 at 1-3. Attached to the motion is a proposed second amended complaint, which names seven (7) defendants: Benjamin Mauldin, Ann Ward, Melissa Godfrey, T. Marshall and Wixon (in their individual capacities) and Richard Stapleton and Zeller (in their official capacities). Doc. Ent. 29 at 4-12, 31-32; *see also* Doc. Ent. 29 at 13-30 (Exhibits A-E).

On September 15, 2014, MDOC defendants Mauldin, Ward and Godfrey filed a response. Doc. Ent. 31. Plaintiff filed a reply on September 25, 2014. Doc. Ent. 33.

Ent. 21 at 21), plaintiff seems to point out that her September 2, 2014 proposed second amended complaint sues Ward in her individual capacity (*see* Doc. Ent. 29 at 4, 5-6 ¶ 5; *see also* Doc. Ent. 29 at 12 ¶ 28). Doc. Ent. 35 ¶¶ 7-8.

In sum, plaintiff seeks guidance as to whether she should respond to the pending July 22, 2014 motion to dismiss (Doc. Ent. 21) now or wait to do so until the Court addresses her pending September 2, 2014 motion for leave to file an amended complaint (Doc. Ent. 29). Doc. Ent. 35 at 2.

IV. Order

Upon consideration, plaintiff's October 1, 2014 motion (Doc. Ent. 35) - for guidance in responding to Mauldin, Ward and Godfrey's July 22, 2014 motion to dismiss (Doc. Ent. 21) - is DENIED. The Court is not permitted to guide plaintiff with legal advice.

Still, the deadline for plaintiff to respond to Mauldin, Ward and Godfrey's motion to dismiss (Doc. Ent. 21) is EXTENDED to December 3, 2014. Moreover, plaintiff SHALL have until December 3, 2014 by which to file a response to Stapleton's motion to dismiss (Doc. Ent. 38).

Once the time in which to respond has passed, the Court will address Mauldin, Ward and Godfrey's July 22, 2014 motion to dismiss (Doc. Ent. 21), plaintiff's September 2, 2014 motion for leave to file an amended complaint (Doc. Ent. 29) and Stapleton's October 8, 2014 motion to dismiss (Doc. Ent. 38).

IT IS SO ORDERED.

The attention of the parties is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of service of a copy of this order within which to file an appeal for consideration by the district judge under 28 U.S.C. § 636(b)(1).

Dated: October 8, 2014

s/Paul J. Komives
PAUL J. KOMIVES
UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of the foregoing document was sent to parties of record on October 8, 2014, electronically and/or by U.S. Mail.

s/Michael Williams
Case Manager to the
Honorable Paul J. Komives